

## Gowanus Canal Information Request

Carr, Brian <Carr.Brian@epa.gov>

Fri 7/23/2021 10:35 AM

To: King, Christopher (Law) <CKing@law.nyc.gov>

Cc: Hayes, Richard (USANYE) <Richard.Hayes@usdoj.gov>; Weigert, David (ENRD) <David.Weigert@usdoj.gov>; Sainsbury, Walter <sainsbury.walter@epa.gov>; Mulvihill, Daniel <DMulvihill@dep.nyc.gov>; Robert Fox <RFox@mankogold.com>

Chris,

As you know, the City is a respondent to various EPA administrative orders, including the following:

- Administrative Order for Remedial Design (“RD”), Index Number CERCLA-02-2014-2019, issued on May 28, 2014 (the “City RD UAO”);
- Administrative Order on Consent, Index Number CERCLA-02-2016-2003, issued on June 9, 2016 (“Tank AOC”);
- Administrative Order for Removal Action, Index Number CERCLA-02-2019-2010, issued on April 11, 2019 (“Bulkhead Removal UAO”);
- Administrative Order for Remedial Action, Index Number CERCLA-02-2020-2003, issued on January 28, 2020 (“RTA 1 RA UAO”); and
- Administrative Order for Remedial Action, Removal Action, and Remedial Design, Index No. CERCLA-02-2021-2010, issued on March 29, 2021 (“CSO RA UAO”).

All of the orders contain information and document production requirements, including paragraph 90 of the CSO RA UAO, which states, in part:

*Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. All data, information and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph.*

EPA is in receipt of the City’s July 14, 2021 Notice of Intent to Comply (“NOIC Letter”) with the CSO RA UAO. The NOIC Letter raises, among other things, various factual and technical issues.

### Information and Document Production Request

Pursuant to the applicable provisions, including but not limited to paragraph 90 of the CSO RA UAO, EPA directs to the City to provide the information and documents identified below:

- At page 36 of the NOIC Letter, the City disputes that it owns the Canal, and notes that the “City will provide additional information on this issue if EPA so desires.” **Please provide such information and supporting documentation.**

- The NOIC Letter at page 36 further states: *“In addition, the City neither constructed nor operated the 1<sup>st</sup> Street Basin and there is no definitive evidence that the City owned the 1<sup>st</sup> Street Basin.”*

As you are aware, in 2017 EPA facilitated property access for the City’s RD work at the 1<sup>st</sup> Street basin with Frank Perone of TBD Five Management, the owner of 430 Carroll Street, and also helped facilitate the removal of vehicles and debris stored on a large portion of the basin by him. During that effort, Mr. Perone stated to EPA that he had for a period of years been leasing a portion of the basin from the City via DCAS. The existence of the DCAS lease was conveyed to you by EPA, and contemporaneously confirmed by you.

**Please provide copies of all DCAS leases relating to the 1<sup>st</sup> Street basin, and a spread sheet or comparable summary setting forth the period of the lease(s) and the associated frequency and amounts of payments to the City. In addition, please provide copies of all tax assessments and tax delinquency notices sent by the City to any purported private owners of the 1<sup>st</sup> Street basin since the 1966 completion of it being filled in.**

- The NOIC Letter disputes various issues regarding the requirement for separation of stormwater at City-owned street ends (e.g., at pages 32-33). **Please identify by name each City-owned street end that terminates at the Canal, and whether there is an existing CSO and/or separated storm water outfall at such street end.**
- The NOIC Letter states at page 31:

*Recently, DEP received a permit sewer connection application for a development along the canal that highlights the problems associated with separating sewers in this area. The developer had indicated that, in accordance with the Order, it will send sanitary loads to the combined sewer; that it will separate and treat stormwater from the site; and that it will discharge the on-site stormwater to the canal pursuant to a SPDES permit it will obtain from NYSDEC. DEP has no objection to these aspects of the developer’s plan. However, the development also includes the creation of a new street that ends at the canal, and the developer has proposed separating and treating stormwater from the new street and discharging it to the canal from a second outfall at the street end.*

Based on prior discussions with the City, EPA believes that this discussion refers to redevelopment adjacent to the Huntington Street end, for which spot rezoning approval was recently granted by the City. **Please provide all non-confidential documents in the City’s possession regarding: 1) the City’s ownership or alleged non-ownership of the Huntington Street end; 2) the developer’s stormwater and sanitary sewage-related submissions, prior to or after the rezoning approval; 3) the City’s responses to such submissions; and 4) any other the City’s technical review, comment, analysis or other documents regarding stormwater and sanitary sewage issues at the Huntington Street end. Please provide a privilege log for any documents which the City claims are confidential regarding this specific request.**

The NOIC Letter implies that the City has already conducted a thorough review regarding the disputed factual and technical matters, such as ownership of the Canal and the 1<sup>st</sup> Street Turning Basin and conditions at the above-cited street end. In light of this prior review, the City is

directed to provide the requested information and documents within 45 days from the date of this request.

Document Retention

As EPA has noted to the City several months ago, all of the administrative orders contain document retention requirements.

Please let me know if you have any questions regarding this communication. Thank you for your anticipated cooperation.

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